



The Task Force on Court Facilities
455 Golden Gate Avenue, San Francisco, CA 94102-3660

FINANCE AND IMPLEMENTATION COMMITTEE

Meeting Report

Fess Parker's Doubletree Resort - Santa Barbara

August 31, 2000

<p>TASK FORCE ATTENDEES: Hon. Daniel Kremer Hon. Wayne Peterson</p> <p>COMMITTEE MEMBERS: PRESENT: Mr. David Janssen, Chair Mr. Greg Abel Mr. Fred Klass Hon. Charles Smith Hon. Diane Wick</p> <p>ABSENT: None</p>	<p>PRESENTERS: Dr. Thomas Gardner, VITETTA</p> <p>TASK FORCE STAFF: Mr. Bob Lloyd Mr. Bob Emerson</p> <p>CONSULTANTS TO THE TASK FORCE: Dr. Thomas Gardner, VITETTA Mr. Jay Smith, DMJM Ms. Kit Cole, VITETTA</p> <p>GUESTS: Mr. John Abbott, Orange County Counsel's office Mr. Kevin Carruth, County of Santa Clara Mr. Bruce Doenges, Ventura Superior Court Ms. Karen Finn, Department of Finance Mr. Chris Guyer, Office of the Legislative Analyst Mr. Joseph T. Fallin, Los Angeles Superior Court Ms. Tressa Kenter, San Bernardino Superior Court Mr. Dave Kronberg, County of Sonoma General Services Agency Ms. Sally Lukenbill, Department of Finance Ms. Eraina Ortega, Office of the Legislative Analyst Ms. Jody Patel, AOC Office of Governmental Affairs Mr. Robert Sherman, Ventura Superior Court Mr. John Van Whervin, Los Angeles Superior Court <i>(Others may have been present but not signed in)</i></p>
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Committee agenda

1. Discussion of CPI Index issues
2. Discussion of Phase 5 report outline (if not completed at Task Force meeting on previous day)
3. Discussion of other outstanding issues
 - a. Regulatory structure
 - b. Other

Agenda Item #1 – Discussion of CPI Index issues

The Committee discussed the information provided by the consultants regarding CPI issues and approved the use of the National and State Producer and Consumer Price Indices that provide a comparison of specific indices targeted at actual building owner cost data. The consultants believe that this index is the most appropriate and accurate for the MOE as the national database includes several building cost indices: cleaning and maintenance, operating office property, maintenance and repairs, and janitorial and custodial costs. The Committee recommends that these four indices be averaged to create a more stable overall index with less change from year-to-year and with the widest range of cost elements. Each of the five years cost data should be multiplied by the PPI prior to an average calculation to ensure that all cost items are brought up to the value of those items in the year that the negotiation is settled.

Agenda Item #2 – Discussion of Phase 5 report outline

The Committee deferred discussion on this issue to its next meeting.

Agenda Item #3 – Discussion of other outstanding issues**A. Regulatory structure**

The Committee concurred with the general division of responsibilities among state and local entities, as follows:

Overview of Responsibility for Court Facilities

Entity	Role
Governor	Review and approval of budget
Legislature	Review and approval of budget
Department of Finance	<ul style="list-style-type: none"> Review of project need and allocation of capital funds Review of five-year capital outlay plan
Judicial Council	<ul style="list-style-type: none"> Establish need for and request capital funds based on Department of Finance standard capital outlay process Allocation of capital funds and projects Capital project design reviews and approvals Monitoring and enforcement of standards compliance Establishment and maintenance of facility database Establishment of operations and maintenance priorities and allocation of O&M funds to support those priorities Review and approval of leases entered into with counties or private landlords Final approval of facility siting Audit of construction
Local court	<ul style="list-style-type: none"> Assessment of local need Contribute to the development of five year capital plans Site recommendations
County	<ul style="list-style-type: none"> Continue funding of non-810 facilities-related maintenance through MOE with the state Manage mixed-use facilities if the lease agreement with the state so requires Siting recommendations for new capital outlay

B. Pipeline issues

Because of their awareness of the pending Task Force recommendations regarding transfer of facility responsibility to the state, and the potential that those recommendations will be enacted, county supervisors have been hesitant to commit significant amounts of county general funds for court facilities design and construction. This situation has the potential negative effect of stopping the flow of new capital for needed improvements, expansions, and replacements of existing court facilities. There is a need for some kind of

incentive that will encourage counties to continue to commit general funds for the various stages of court facility projects.

The Committee discussed at length the challenges inherent in maintaining the flow of projects in the pipeline and incentivizing counties and courts to continue construction. As part of its search for a solution to the issue, the Committee requested that the consultants provide more information to the Committee at its next meeting regarding the funds available for court construction via the California Infrastructure and Economic Development Bank.

C. Establishing the threshold for rejection of buildings by the state

The Committee discussed at length the issue of whether the state should be able to reject county buildings based on health and safety, seismic or other criteria. Additionally, the Committee discussed whether counties should be required to provide the state with comparable facilities, or compensation if comparable facilities are not available. The Committee requested that the consultants, as well as Orange County staff, draft language that establishes a reasonable threshold for state rejection of facilities as well as county remedies that might be put in place. The Committee also requested that DMJM provide the Committee with information regarding the number of facilities that could be classified as “deficient” pursuant to DMJM’s survey.

D. Elements that could be included in the MOE between the state and the counties

The Committee discussed this issue and requested that the consultants, as well as staff from Orange County, provide language at the next meeting related to those elements

E. Funding sources available for court facilities

The Committee discussed generally the revenue streams available to financing court facility construction and other needs and directed the consultants to provide to Committee members a copy of the fee and financing information that was included in the Committee’s July packet.

F. The “double count” issue

Orange County staff raised the issue of “double counting” for some of the state’s largest counties, relative to court operations costs. The Committee directed Orange County staff to provide language prior to the next Committee meeting which could remedy the double count issue.

G. Language approved/amended by the Task Force at its August 30 meeting

Strikeouts and italics reflect changes made by the Task Force at its meeting on August 30 in Santa Barbara.

Responsibility

1. The state shall ultimately be fully responsible for all court facilities, including providing facilities for current and future judges and staff.
2. Pursuant to AB 233, responsibility for providing court facilities for new judges and staff associated with those judges *shall continue to rest* ~~rest~~ with the state, ~~effective after~~ *effective after* July 1, 2001.
3. Responsibility for providing court facilities shall remain with the counties until completion of the negotiations between the Judicial Council and the counties.
4. Responsibilities of parties sharing mixed-use buildings shall be established by agreement.

Fiscal Neutrality

1. Responsibility for funding existing debt on facilities shall remain with the counties until the debt is retired, either directly or by transferring the revenue stream and debt to the state.
2. The control of court facilities should transfer to the state without any fiscal gain or loss to either the counties or the state.

3. If title transfers, it shall do so without payment for capitalized value of buildings and the land associated with those buildings. *Determination of appraised value shall not be necessary as a condition of transfer.*
4. Existing non-Rule 810 facility operations and maintenance costs shall continue to be funded by the counties through a maintenance of effort (MOE) agreement.
5. The MOE will be determined based on a calculation of the average of the most recent three fiscal years of non-Rule 810 allowable costs related to facilities, ~~as tracked by the counties.~~ Additionally, the appropriate consumer or producer price index will be calculated and added, as appropriate. The MOE amount will be fixed based upon the adjusted three-year average, plus appropriate CPI, at the effective date of the negotiated transfer agreement between the state and the counties. Prior to _____(date) each county shall submit to the Department of Finance data regarding non-810 facility costs from the most recent three fiscal years. Prior to being submitted to the Department of Finance, all data shall be certified by the county auditor.
- ~~6. Determination of appraised value shall not be necessary as a condition of transfer.~~
7. 6. Revenue generated by the Courthouse Construction fees will transfer from the counties to the state, less any funds obligated to debt service, should the outcome of the negotiations between the Judicial Council and the counties determine that the debt should remain with the counties. Should the debt transfer to the state, the corollary debt service stream shall also transfer to the state. *Note: see #12 under Implementation Issues for more detail regarding this issue.*

Principles for Transfer

1. It is critical to expedite the transfer of responsibility for court facilities to the state.
2. The transfer of responsibility shall be accomplished through negotiations between the Judicial Council and the counties, *in consultation with the local court.*
3. The state shall not hold the counties liable for deferred maintenance that existed in the base year and for which no funds were earmarked to address that maintenance.
4. Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon by the Judicial Council and the counties and shall be spelled out in an MOU.
5. ~~A building may be determined unsuitable for court use due only to significant health, safety, seismic or functional deficiencies.~~ The state may reject the transfer of unsuitable buildings, in which case the county will continue to be responsible for providing the court with suitable and necessary space. *A building that is "unsuitable for court use" is defined as any building with significant health, safety or seismic deficiencies.* All other single use court facilities shall transfer to the state, unless mutually agreed to by all parties. Counties may appeal rejection of an unsuitable building by the state to the State Public Works Board. The "burden of proof" to demonstrate the justification for which the facility was rejected lies with the state.
- ~~6. Notwithstanding mutual agreement, new mandates should not be placed on the counties as a condition of the transfer.~~
- ~~7. 6. Certain special classes of facilities, such as h/historically significant facilities, may or may not transfer, but must be made available to the state for court use or the county can opt to provide suitable and adequate court facilities in an alternative facility.~~ Facilities considered "historic" shall either be registered on the state's historic register (pursuant to Health and Safety Code 18950) or be eligible for inclusion on the register.
- ~~7. Facilities considered "historic" shall either be registered on the state's historic register (pursuant to Health and Safety Code 18950) or be eligible for inclusion on the register.~~

Implementation Issues

1. ~~Responsibility for providing court facilities shall transfer from the counties to the state, within~~ *Negotiations between the state and the counties regarding the transfer of facilities must be complete within three years after legislation implementing the Task Force's recommendations becomes effective.*
2. The Judicial Council, *in consultation with the local courts,* and the counties will negotiate on a county-by-county and building-by-building basis in order to determine the most optimal way to provide court facilities in that county.

3. The Judicial Council, *in consultation with the local courts*, and the counties will participate in the negotiations regarding the buildings. Local court representatives may observe the negotiations, as well as any other parties mutually agreed to by the Judicial Council and the county.
4. The state Public Works Board will be the final arbiter in any disputes between the Judicial Council and counties during the building-by-building negotiations.
5. All counties shall participate in the transfer of responsibility for court facilities from the counties to the state. Both the county and the state ~~will be~~ *are* entitled to equity in court facilities, based on the respective proportional use of area by the courts and by non-court county functions, at the time that the MOU is determined, regardless of which entity holds title to the facility.
6. Any county general funds or property that have been allocated, approved, appropriated, or committed for a court facility project by a county board of supervisors, by resolution or ordinance, shall remain committed to ~~the~~ *that* project.
7. The state reserves the right to require a county to complete a project in the design or construction phase prior to its transfer to the state.
8. The state can negotiate design changes related to a court facility project with the county to the degree that the design changes do not increase the cost of the project to the county.
9. The state reserves the right to dispose of surplus property when title for the property transfers to the state.
10. Prior to disposing of court facilities that were previously the responsibility of the counties, the state shall comply with the requirements of Government Code section 11010.5 et seq.
11. Prior to the state making a decision to sell, lease or otherwise dispose of a court facility transferred from a county to the state, it shall consult and discuss the potential sale, lease or disposition with the affected county. The state shall also consider whether the potential new or planned use of the facility:
 - Is compatible the use of other adjacent public buildings.
 - Would interfere with public access to other governmental functions adjacent to the court facility.
 - Would unreasonably depart from the historic or local character of the surround property or local community.
 - Would have a negative impact on the local community.
 - Will unreasonably interfere with other governmental agencies that use or are located in or adjacent to the court facility.

Additionally, the state shall consider whether the decision to cease using the facility or site outweighs a public good in maintaining it as a court facility or site.
12. The counties shall transfer 75% of the unencumbered revenue generated by the Courthouse Construction fee to the Judicial Council for allocation by the Judicial Council. The remaining 25% will be retained by the court and allocated pursuant to current law.

Principles for negotiation involving mixed-use buildings

Strikeouts and italics reflect changes made by the Task Force at its meeting on August 30 in Santa Barbara.

1. "Responsibility" for court facilities can be accomplished by the state either holding fee title or entering into a lease agreement with a county or a private landlord *or any other mutually-agreed to mechanism.*
2. The county and ~~state~~ *the Judicial Council* each have equity rights to the space they occupy, regardless of which party holds title.
3. Neither the state nor the county shall charge each other rent for space that the county or the courts occupies at the time the MOU is determined. Costs associated with additional space will be paid by the agency desiring more space.
4. In the case of mixed-use buildings, the state and the county shall continue to be responsible for the operations and maintenance costs associated with the share of the building it occupies, except that the county is liable for the base year operations and maintenance costs pursuant to the terms of the MOE.
5. The sale of property is permissible, regardless of which party holds title; however, neither party can be displaced or forced to move at its expense, except by mutual agreement.

6. The cost of relocating from occupied space to new space will be borne by the agency desiring the new space. However, the departing party shall retain its equity interest in the vacated space.
7. The use of any space occupied by the county or the state must be compatible with the facility and not substantially deteriorate or diminish the ability of either the county or the state to use the remaining spaces effectively.

Added by the Committee at its August 31 meeting

8. *Should the courts require additional space and wish to “buy out” the current county tenant from its space, compensation to the county will be made at the current market rate.*